

By



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,213	07/19/2001	Paul McAlinden	INTL-0601-US (P11742)	9707

7590 08/16/2005

Timothy N. Trop
TROP, PRUNER & HU, P.C.
STE 100
8554 KATY FWY
HOUSTON, TX 77024-1805

EXAMINER

GESESSE, TILAHUN

ART UNIT	PAPER NUMBER
----------	--------------

2684

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/909,213	Applicant(s) MCALINDEN, PAUL	
	Examiner Tilahun B. Gesesse	Art Unit 2684	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed May 23, 2005 have been fully considered but they are not persuasive.

On page 6, third paragraph of applicant's response to claim 1, of the office action , applicant argued that Kermode does not teach or suggest determining of time difference between a first program being transmitted to a first receiver and a second program transmitted to a second receiver and Kermode the is no determination of a time difference between two transmissions.

The examiner disagrees. As office action indicates, Kermode teaches access latency declines with increasing network transfer speeches, (see column 8, lines 45-55.).

Kermode teaches bandwidth gains are possible by utilizing a multicast model rather than a broadcast model. That means instead of transmitting programs in different time , it is advantageous broadcasting at the same time, by multicasting to the plurality of receivers by that Kermode teaches determining time difference between first and second program being transmitted to plurality of receivers (se column 9, lines 36-column 10, line 5).

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically

Art Unit: 2684

pointing out how the language of the claims patentably distinguishes them from the references.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims rejected under 35 U.S.C. 103(a) as being unpatentable over Karmode in view of Carter

As to claim, Karmode discloses a method of transmitting programs to two different receivers (column 5, line 49-column 6, line 12 and 120i and 120ii of figure 1), determining the time difference between a first program (channels M) being transmitted

Art Unit: 2684

to a first receiver (120i) and a second program (channels n) transmitted to a second receiver (120ii) (column 4, lines 14-23 and figure 2), further more, Kermode teaches access latency declines with increasing network transfer speeches, (see column 8, lines 45-55 and (column 9, lines 36-column 10, line 5). Kermode does not specifically disclose reducing the time difference between said programs. However, Carter discloses a segment broadcasting system can significantly reduce client Latencies over staggered broadcasting system (page 1 13, column 2 lines 6-16). Since Kermode and Carter are with similar field of endeavor, video on demand broadcasting technique. Then it would have been obvious to one of ordinary skill in the art at the time of invention was made: to improve the Latency of distribution of video transmission, as taught by Carter, in order to conserve the resource of transmission bandwidth by minimizing the delay of transmission. As to claim 2, Kermode discloses transmitting programs to two different (channel m and channel receivers (120i and 120ii) involve distributing programs over a wireless network (figure 1). As to claim 3, Kermode discloses transmitting programs includes distributing programs over a cable network (column 5 lines 14-19 and figure 1). As to claim 4, Kermode discloses transmitting programs to two different receivers in response to two different requests for programs (abstract).

As to claim 5, Kermode discloses transmitting programs in an on demand basis (abstract). As to claim 6, Kermode discloses determining whether the time difference between a first program and second program is above a predetermined time difference (column 6 lines 24-35 and figure 2 and (column 9, lines 36-column 10, line 5).). As to

Art Unit: 2684

claim 7, Kermode discloses determining whether the time difference between the first program and the second program is sufficient to attempt to reduce the time difference between the programs (column 4, lines 20-24). As to claim 8, Kermode discloses reducing the time difference between said programs includes time compressing one of said programs more than the other and transmitting said programs (column 4, lines 20-24). As to claim 9, Kermode discloses the time difference between said programs includes reducing the rate of data transfer of one of said programs (column 6, lines 20-35 and figure 2) As to claim 10. Kermode discloses reducing the time difference between said programs includes increasing the rate of content transmission of the first program and decreasing the rate of content transmission of the second program until the time difference between said programs is substantially zero (column 6, lines 20-35 and figure 2). As to claim 11, Kermode discloses reducing the time difference between said programs until the time difference substantially zero and then transmitting the first second programs over the same channel to two different receivers (figures 1 and 2).

As to claim 12, Kermode discloses initially transmitting the first and second. Programs on different channels (channel M and channel N of figure 1), reducing the time difference between said programs on different channels until the time difference is substantially zero (figure 2), transmitting both programs on a first channel to two different receivers and freeing a second channel for transmission of another program (figures 1 and 2). Claim 13, it is apparatus claim which corresponds to method claim 1 above. Therefore, it is analyzed and rejected for the same reason as set forth in the claim. Claim 14, Kermode discloses storing instructions that enable the processor-

Art Unit: 2684

based system to distribute programs over a wireless network (1 10 of figure 1). Claim 15, Kermode discloses storing instructions that enable the processor- based system to distribute programs over a cable network (column 5, line 14-25). As to claims 16-19, Kermode discloses storing instructions that enable the processor-based system to transmit programs to two different receivers (receive 1 and 2) in response to two different requests for programs (figure 1). As to claim 20, Kermode the storing instructions that enable the processor-based system to time compress one of said programs more than the other and transmit said programs (column 3 lines 14-25 and figure 1). Claim 21, Kermode discloses storing instructions that enable the processor-based system to reduce the rate of data transfer of one of said programs to reduce the time difference between said programs (column 4, 29-40).

Claim 22, Kermode discloses storing that enable the processor- based system to increase the rate of content transmission of the first program and decrease the rate of content transmission of the second program until the time difference between said programs is substantially zero (column 4, lines 29- 40 and figure 2). Claim 23, Kermode discloses storing instructions that enable the processor- based system to reduce the time difference between the programs until the time difference is substantially zero and then transmit the first and second programs over the same channel to two different receivers (column 4, lines 29-40 P and figures 1 and 2). As to claim 24, Kermode discloses storing instructions that enable the processor- based system to initially transmit the first and second programs on different channels, reduce the time difference between the programs on different channels until the time difference is substantially

Art Unit: 2684

zero, transmit both programs on a first channel to two different receivers and free a second channel for transmission of another program (column 4, lines 29-40 and figure 1 and 2). Claims 25- 26, Kermode discloses a system (figure 1) a server (1 15i and 1 15ii), a transmission device (1 10) coupled to said server (1 15i and 1 15ii), a database of electronic files', a storage storing instructions that enable the server to transmit files to two different receivers over said transmission device, determine the time difference between a first file being transmitted to a first receiver and a second file being transmitted to a second receiver (column 4, lines 29-40 and figure 1 and 2). Kermode does not specifically disclose reducing the time difference between said programs.

However, Carter discloses a segment broadcasting system can significantly reduce client Latencies over staggered broadcasting system (page 1 13, column 2 lines 6-16). Since Kermode and Carter are with similar field of endeavor, video on demand broadcasting technique. Then it would have been obvious to one of ordinary skill in the art at the time of invention was made: to improve the Latency of distribution of video transmission, as taught by Carter, in order to conserve the resource of transmission bandwidth by minimizing the delay of transmission Claim 27, Kermode discloses the transmission device is a cable network transmission device (column 5 lines 14-33 and figure 1). As to claim 28, Kermode discloses the stores instructions that enable the server to determine whether the time difference between a first and second file is above a predetermined time difference (figure 1 and 2). Claim 29, Kermode discloses the storage stores instructions that enable the server to determine whether the time difference between a first file and a second file is sufficient to attempt to reduce the time

Art Unit: 2684

difference between the files (column 6, lines 14- 36). Claim 30, Kermode discloses the storage stores instructions that enable the server to reduce the rate of content transfer of one of said files to reduce the time difference between said files (column 4, lines 14- 45 and figure 1 and 2).

Claims 31-34, Kermode teaches determining the time difference in a server associated with transmitting the programs (column 9, lines 36-column 10, line 5).

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tilahun B Gesesse whose telephone number is 571-272-7879. The examiner can normally be reached on flex.

Art Unit: 2684

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 571-272-7882. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tilahun Geese 8/15/05
TILAHUN GESESE
PRIMARY EXAMINER